Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	**WC Docket No. 18-60**
Iowa Network Services, Inc. d/b/a Aureon Network Services Tariff F.C.C. No. 1.	**Transmittal No. 36**

CONSOLIDATED OPPOSITION OF IOWA NETWORK SERVICES D/B/A AUREON NETWORK SERVICES TO AT&T SERVICES, INC.'S RENEWED MOTION TO AMEND PROTECTIVE ORDER AND SPRINT COMMUNICATIONS COMPANY, L.P.'S JOINDER

James U. Troup
Tony S. Lee
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, Suite 1100
Arlington, VA 22209
Tel: (703) 812-0400
Fax: (703) 812-0486
Email: troup@fhhlaw.com
lee@fhhlaw.com

Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services

Date: September 24, 2018

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Washington, D.C. 20554

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	)	

CONSOLIDATED OPPOSITION OF IOWA NETWORK SERVICES D/B/A AUREON NETWORK SERVICES TO AT&T SERVICES, INC.'S RENEWED MOTION TO AMEND PROTECTIVE ORDER AND SPRINT COMMUNICATIONS COMPANY, L.P.'S JOINDER

Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon") submits this Consolidated Opposition to the September 14, 2018 Renewed Motion To Amend Protective Order filed by AT&T Services, Inc. ("AT&T") and the joinder filed by Sprint Communications Company, L.P. ("Sprint") in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

AT&T's motion – joined by Sprint – to amend the longstanding Protective Order entered by the Federal Communications Commission ("FCC") in this proceeding ("AT&T Motion") should be denied. By that motion, AT&T seeks to enable a high-ranking AT&T employee – and others – to review Aureon's competitively sensitive proprietary information. Sprint, for its part, vaguely requests that unidentified "inside consultants" employed by Sprint and other business rivals of Aureon be given similar access to Aureon's highly sensitive business information.[1] For at least the following reasons, AT&T's and Sprint's Motions should be denied:

1. Contrary to AT&T's unsupported and conclusory assertions, AT&T's senior executive, Mr. Daniel Rhinehart, is extensively involved in

[1] *See* Mot. of Sprint Commc'ns Co., L.P. Joining AT&T Servs., Inc.'s Renewed Mot. To Amend Protective Order at 1, 3 (Sept. 19, 2018) ("Sprint Motion").

AT&T's competitive decisionmaking and strategy, as Aureon previously demonstrated. *See infra* Part I. In any event, the "competitive decisionmaking" standard historically has been used to determine whether in-house lawyers – not business executives, where misuse risks are far greater – could be given access to certain confidential materials of an adverse party.

2. The type of information that Aureon has been ordered to provide in its revised tariff filing relates not only to its regulated operations but its unregulated competitive business operations as well. That information is far more granular and competitively sensitive than the information that Aureon has provided previously and would give anyone with access a roadmap to Aureon's inner workings, including each and every circuit it operates and how those circuits are used.

3. AT&T's claim that only Mr. Rhinehart would gain access to Aureon's sensitive business materials already has been proven false by Sprint in its joinder to AT&T's motion. Granting Sprint's employees access to Aureon's highly sensitive materials is especially troubling given that Aureon has been involved in a tariff enforcement action against Sprint for many years for Sprint's refusal to pay for services requested and received.

4. As AT&T itself points out, Mr. Rhinehart already has been able to persuade the FCC to take certain actions with the existing information he has reviewed. There is no need to enable a high-ranking AT&T Director to see more highly sensitive information regarding Aureon's inner workings than he already has.

5. AT&T's and Sprint's claims of unfairness regarding their professed inability to review Aureon's confidential business information are of their own doing. Both have had ample time to engage outside independent consultants – who would have full access to the information provided by Aureon – but they deliberately have chosen not to do so. Thus, they cannot be heard to complain now.

For these reasons, and as set forth in more detail below, AT&T's and Sprint's motions should be denied.

ARGUMENT

I. CONTRARY TO AT&T'S CLAIM, MR. RHINEHART HAS PLAYED AN INTEGRAL ROLE IN DETERMINING AND IMPLEMENTING AT&T'S COMPETITIVE STRATEGY.

As an initial matter, the entire premise of AT&T's Motion – *i.e.*, that "Mr. Rhinehart is not involved in competitive decisionmaking"[2] and therefore should have access to Aureon's most sensitive information – is wrong. As Aureon previously demonstrated, Mr. Rhinehart – a senior executive at AT&T who has worked there or at AT&T's predecessor for decades – has been pervasively involved with AT&T's competitive decisionmaking and strategy.[3] Mr. Rhinehart has a Master's in Business Administration and has held titles of increasing responsibility within the company over time, including as a "Manager" over rates and tariffs and a financial analyst.[4] He currently serves AT&T at the high-ranking "Director" level.[5]

Even more to the point, Mr. Rhinehart has explicitly testified on AT&T's behalf regarding AT&T's competitive position in an effort to preserve and enhance that position. For example, Mr. Rhinehart testified that certain offerings of a competing carrier are "anticompetitive and discriminatory" and will "place AT&T at competitive and financial

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[2] AT&T Mot. at 7.

[3] *See* Opp'n of Iowa Network Servs. d/b/a/ Aureon Network Servs. to AT&T Servs., Inc.'s Mot. To Amend Protective Order and for Declaratory Ruling at 10-12 (Apr. 30, 2018) ("Aureon Opp'n").

[4] Prefiled Direct Test. of Daniel P. Rhinehart Regarding United Utilities, Inc., Regulatory Comm'n of Alaska, U-08-90, at 1-2 (Dec. 23, 2008) (relevant excerpts attached as Ex. A hereto); *see also* Decl. of Daniel P. Rhinehart, *AT&T Corp. v. Iowa Network Servs., Inc. d/b/a Aureon Network Servs.*, FCC Proc. No. 17-56, at 1 (June 1, 2017) (testifying that he has held "a number of different jobs with increasing responsibilities in the finance and regulatory areas" at AT&T over nearly 40 years) (relevant excerpts attached as Ex. B hereto).

[5] *Id.*

disadvantage to … direct competitors of AT&T."[6] He also has opined regarding how "AT&T will face massive and certain market share losses" as a result.[7] Moreover, the very point of Mr. Rhinehart's testimony in this and numerous other similar proceedings is to harm the competitive position of AT&T's business rivals while enhancing AT&T's, often by attacking the rates charged by those rivals.

Given this testimony and Mr. Rhinehart's long tenure and high-ranking Director status at AT&T, AT&T's bare and unsupported *ipse dixit* regarding Mr. Rhinehart's alleged lack of involvement in competitive decisionmaking is not credible.[8] The risk of inadvertent disclosure and use simply remains too great to permit Mr. Rhinehart and other non-lawyer personnel from AT&T, Sprint, and other business rivals of Aureon to be permitted access to the highly confidential information that Aureon will produce at the FCC's direction.

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[6] Direct Test. of Daniel P. Rhinehart on Behalf of AT&T Commc'ns of the Southwest, Inc., *Public Util. Comm'n of Tex.*, SOAH Dkt. No. 473-99-1963, PUC Dkt. No. 21292, at 4-5 (Oct. 22, 1999) (relevant excerpts attached as Ex. C hereto).

[7] *Id.* at 13; *see also* Report and Order, Pub. Serv. Comm'n of Mo., Case No. TT-2000-258, at 5 (Apr. 5, 2000) (discussing Rhinehart's testimony that system of competitor "puts AT&T at competitive disadvantage") (Ex. D hereto); Direct Test. of Daniel P. Rhinehart on Behalf of AT&T Ga. Before the Ga. Pub. Serv. Comm'n Regarding the UAF Revenue Requirement of Pub. Serv. Tel. Co., Dkt. No. 32235, at 1, 3-6 (Aug. 17, 2011) (testifying that job title is "Lead Financial Analyst and opining regarding reasonableness of company's claimed return and costs) (relevant excerpts attached as Ex. E hereto).

[8] *See, e.g.*, *FTC v. Advocate Health Care Network*, 162 F. Supp. 3d 666, 674 (N.D. Ill. 2016) (observing that *ipse dixit* of the defendants to sustain their position" "is not enough" to grant in-house counsel access to highly confidential information of competitors); *Silversun Indus., Inc. v. PPG Indus., Inc.*, 296 F. Supp. 3d 936, 941 (N.D. Ill. 2017) ("Invocation of words and phrases is not enough. Nor is it enough to say that competitive business decisions *per-se* are not made by in-house counsel, but by others."); *id.* at 939 n.2 ("Unsubstantiated assertions by counsel are given no evidentiary weight.").

In any event, as Aureon previously demonstrated,[9] the very notion of permitting non-lawyer business executives to review confidential information of business adversaries is inconsistent with the very reason why courts crafted the "competitive decisionmaking" test in the first place. That test was specifically crafted to gauge whether in-house lawyers – not non-lawyer business personnel – should be given access to a business rival's confidential information. In-house lawyers typically function primarily as legal advisors rather than as business strategists, whereas virtually by definition, the key role of non-lawyer company employees is to assist the company in maximizing its profits and gaining marketplace advantage over its competitors. One court described the term "competitive decision-making" "as shorthand for a counsel's activities, association, and relationship with a client that are such as to involve counsel's advice and participation in any or all of the client's decisions (pricing, product design, etc.) made in light of similar or corresponding information about a competitor."[10] In light of this definition, there can be no doubt that Mr. Rhinehart's role in attempting to drive down the rates of AT&T's competitors is the quintessence of "competitive decisionmaking."

Moreover, lawyers are subject to stringent ethical and professional obligations – with steep fines imposed when those obligations are violated – that provide further protection against inadvertent disclosure of confidential information but that do not apply to non-lawyers.[11] Thus, even if Mr. Rhinehart and others were not engaged in "competitive decisionmaking," there remains too great of a risk in providing them access to Aureon's key competitive data given their

[9] *See* Aureon Opp'n at 5-10.

[10] 730 F.2d 1468 n.3 (Fed. Cir. 1984); *accord FTC v. Whole Foods Mkt., Inc.*, Civil Action No. 07-1021 (PLF), 2007 WL 2059741, at *2 (D.D.C. July 6, 2007).

[11] *See* Aureon Opp'n at 8-9.

inherent business roles and the lack of the unique, harsher, sanctions that attach to lawyers in the case of improper use or disclosure of data.

II. NO INTERNAL EMPLOYEES OF AT&T OR SPRINT SHOULD HAVE ACCESS TO THE HIGHLY CONFIDENTIAL INFORMATION THAT AUREON HAS BEEN ORDERED TO SUBMIT, WHICH INCLUDES DETAILED INFORMATION ABOUT AUREON'S UNREGULATED BUSINESS.

The risk of improper use and disclosure by Aureon's business rivals is particularly acute given the highly sensitive nature of the information that Aureon is providing as part of its revised tariff filing, which relates not only to Aureon's regulated business but its unregulated competitive business as well. In a July 31, 2018 Memorandum Opinion and Order directing Aureon to provide supplemental information regarding its tariff, the FCC observed that "[b]ecause Aureon's lease is an affiliate transaction in which a nonregulated entity is providing a service to a regulated entity, our rules require us to evaluate the facilities lease expense against a ceiling determined by the lower of fair market value of the lease or the fully distributed costs of the facilities."[12] The Commission found that Aureon needed to submit additional information to demonstrate its "fully distributed costs of the facilities" provided by its nonregulated entity and accordingly ordered Aureon to submit:

> cost support that includes further justification of the allocation of C&WF [cable and wire facilities] among DS1s, relative to DS3s (and circuits of higher capacity) between regulated and nonregulated activities.[13]

[12] Mem. Op. and Order ¶ 56 (July 31, 2018); *see also* 47 CFR § 32.27(c)(2).

[13] Tariff Order ¶ 90.

It directed that "[s]uch filing should include all relevant data for all circuit types included in the study, including an explanation of the regulated or nonregulated service provided over them and a circuit inventory matching such explanation.[14] The FCC stated that it expected:

> such circuit inventory to include unique entries for all circuits used to calculate the C&WF allocator (including circuits being used for nonregulated purposes, including any DS1s) noting whether each such circuit is being used for regulated purposes, nonregulated purposes, or both. To the extent that Aureon relies on any other characteristic of such circuits in proposing its method of allocating C&WF, it should also include such characteristic(s) in its circuit inventory.[15]

In compliance with the FCC's directives, Aureon is preparing a detailed spreadsheet spanning hundreds of pages that includes highly granular information regarding each of the circuits in its circuit inventory and whether each such circuit is used in Aureon's regulated or its unregulated business. To Aureon's knowledge, it has never before produced such detailed and competitively sensitive information, which effectively will provide a roadmap to the inner workings of Aureon's company, including a description of each and every circuit and how those circuits are used. It is imperative that this type of highly confidential information be protected from disclosure to employees of Aureon's business rivals.

III. SPRINT'S OWN MOTION SEEKING ACCESS TO AUREON'S SENSITIVE DATA FOR ITS OWN INTERNAL EMPLOYEES REFUTES AT&T'S CLAIM THAT ACCESS WOULD BE CONFINED TO MR. RHINEHART ALONE.

AT&T attempts to support its motion by claiming that "there is no danger that permitting Mr. Rhinehart to access confidential material would invite broader access."[16] But that assertion already has been proven false by Sprint's "me, too" motion filed in this proceeding seeking the

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[14] *Id.*

[15] *Id.* ¶ 90 n.283.

[16] AT&T Mot. at 7.

very same access for its own unidentified "inside consultants" that AT&T demands that Mr. Rhinehart have.[17] Aureon has been involved in a tariff enforcement action against Sprint due to Sprint's refusal to pay for services it ordered and received from Aureon, and it would be highly prejudicial for any inside employees of Sprint to gain access to sensitive and proprietary information regarding Aureon's inner workings. Worse yet, neither AT&T's nor Sprint's motion is limited to their own employees but would grant access to any inside consultant of any business rival of Aureon so long as the consultant claimed not be involved in competitive decisionmaking. AT&T and Sprint have not remotely demonstrated that expanding access to non-lawyer personnel of interested companies is warranted or appropriate.

IV. AT&T AND SPRINT CANNOT BE HEARD TO COMPLAIN ABOUT ACCESS BECAUSE THEY COULD HAVE ENGAGED OUTSIDE INDEPENDENT EXPERTS TO REVIEW AUREON'S SENSITIVE DATA BUT CHOSE NOT TO DO SO.

AT&T's and Sprint's claims of unfairness and prejudice arising from the continued protection of the confidentiality of Aureon's competitively sensitive information[18] similarly provide no basis for stripping that information of its protection from disclosure and misuse. Both AT&T and Sprint have had months to engage outside independent consultants. Unlike AT&T's and Sprint's internal executives, such as Mr. Rhinehart, those independent consultants would have had full access to the information provided by Aureon, including even the most competitively sensitive information. Both rivals, however – with full knowledge that their own internal employees did not have access to the confidential and proprietary information provided

[17] *See* Sprint Mot. at 3.

[18] *See* AT&T Mot. at 6 (alleging that barring Mr. Rhinehart from access "is fundamentally unfair"); Sprint Mot. at 2 (claiming that without inside consultant access to Aureon's proprietary and sensitive business information, "Sprint had no way to effectively respond" to a contention by Aureon).

by Aureon – deliberately chose not to do so. Instead, both decided to rely exclusively on declarations from internal personnel. Thus, AT&T and Sprint cannot be heard to complain about their employees' professed inability to review Aureon's highly confidential business information when they themselves manufactured that lack of access by their choice of consultants to assist them in this proceeding.

In any event, and as AT&T itself points out, Mr. Rhinehart has been able to persuade the FCC to take certain actions with the information that he already has been able to review.[19] There simply is no need to enable a high-ranking AT&T Director to see more highly sensitive information regarding Aureon's inner workings than he already has, particularly given the especially sensitive and granular nature of the information that Aureon will be producing with its revised tariff.

V. AT&T'S CLAIM THAT MR. RHINEHART HAS NOT MISUSED SENSITIVE INFORMATION IS UNRELIABLE AND UNVERIFIABLE.

Finally, AT&T's claim that Mr. Rhinehart did not, and will not, misuse Aureon's data cannot help it.[20] If Mr. Rhinehart had – willfully or inadvertently – improperly relied on Aureon's data in conjunction with helping AT&T craft its business strategy, Aureon would have no way to know that because that reliance would have occurred internally at AT&T. Moreover, even if Mr. Rhinehart's intentions are well-meaning, the risk that he will inadvertently disclose or misuse Aureon's sensitive information simply is too great to warrant allowing him access. As one court has held in the context of considering whether to provide an in-house lawyer access to

[19] AT&T Mot. at 5-6.

[20] *See id.* at 7.

such confidential information – where the risks are far lower than with business executives such as Mr. Rhinehart given attorneys' predominantly legal role:

> The primary concern underlying the "competitive decision-making" test is not that lawyers involved in such activities will intentionally misuse confidential information; rather, it is the risk that such information will be used or disclosed inadvertently because of the lawyer's role in the client's business decisions.[21]

Thus, AT&T's *ipse dixit* claim that no improper reliance has occurred – or will occur – is insufficient to assure against improper disclosure and misuse. Moreover, given that access would not be confined to AT&T alone but would include any internal employee of Aureon's business rivals willing to assert that he or she is not involved in competitive decisionmaking, AT&T and Sprint simply have no way of guaranteeing proper treatment of Aureon's data. The information submitted by Aureon can be easily used by AT&T and other competitors to design service offerings and marketing campaigns to target areas where such information shows that Aureon is most vulnerable, such as services that are the most expensive or least profitable for Aureon, or locations where competitors' efforts should be directed due to, for example, circuit availability or capacity issues. There is no reason to lift the protections of the existing Protective Order now in light of the risks of improper disclosure and use of Aureon's information despite AT&T's claims to the contrary.

CONCLUSION

For the foregoing reasons, the FCC should continue to protect the confidentiality of Aureon's sensitive information against disclosure to employees of Aureon's business rivals, particularly given the especially sensitive nature of the circuit-by-circuit inventory that Aureon

[21] *FTC v. Sysco Corp.*, 83 F. Supp. 3d 1, 3-4 (D.D.C. 2015).

soon will be providing. AT&T's and Sprint's motions seeking to strip that confidentiality should be denied.

Respectfully submitted,

/s/ James U. Troup

James U. Troup
Tony S. Lee
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, Suite 1100
Arlington, VA 22209
Tel: (703) 812-0400
Fax: (703) 812-0486
Email: troup@fhhlaw.com
lee@fhhlaw.com

Counsel for Iowa Network Services, Inc. d/b/a Aureon Network Services

Date: September 24, 2018

EXHIBIT A

STATE OF ALASKA

BEFORE THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman
Kate Giard
Mark K. Johnson
Anthony A. Price
Janis W. Wilson

In the Matter of the Consideration of the Access Charge Revenue Requirement of UNITED UTILITIES, INC.	)))	U-08-90

PREFILED DIRECT TESTIMONY OF DANIEL P. RHINEHART REGARDING UNITED UTILITIES, INC.

Q PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A My name is Daniel P. Rhinehart. My business address is 400 West 15th St., Room 950, Austin, Texas 78701.

Q BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?

A I am employed by AT&T Services, Inc. My job title is Area Manager-Rates/Tariffs. However, my primary job function is as a financial analyst. I am testifying today on behalf of AT&T Alascom ("AT&T").

Q PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A I hold a Bachelor of Science in Education (mathematics major) and a Masters of Business Administration. I have attended numerous training courses covering the topics of separations, telephone accounting, and long run incremental costs. I have

ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

completed the Brookings Institute course on Federal Government Operations and the University of Southern California Center for Telecommunications Management, Middle Management Program in Telecommunications. I am presently pursuing a Chartered Financial Analyst (CFA) designation and passed the Level I examination in June, 2008.

Q PLEASE DESCRIBE YOUR WORK EXPERIENCE.

A I began my career with Nevada Bell in 1979. Soon thereafter, I joined Nevada Bell's Separations and Settlements organization where I was responsible for reviews of independent telephone company separations and settlements studies and gained significant experience in analyzing telephone cost studies. At the divestiture of the Bell System in 1984, I joined AT&T's separations organization and was subsequently promoted with responsibility for mechanized separations results and analysis for AT&T Communications of California. Later, I joined the Exchange Carrier Cost Analysis group where I evaluated numerous regulatory and cost filings of local telephone companies operating in California. I also held the position of Vice Chairman of the California Universal Lifeline Telephone Service Trust Fund for approximately two years. I relocated to Texas in 1995 initially with responsibilities in the states of Texas, Kansas, Arkansas, Missouri, and Oklahoma. Since then I have participated in numerous local exchange carrier regulatory proceedings, with a focus on local exchange carrier cost studies. In March 2006, I joined the post-SBC-AT&T merger finance organization where I have had responsibility for developing cost studies as well as analyzing studies produced by others.

ASHBURN & MASON P.C.
LAWYERS
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
Tel 907.276.4331 • Fax 907.277.8235

Q HAVE YOU PREVIOUSLY TESTIFIED OR FILED TESTIMONY BEFORE A PUBLIC UTILITY OR PUBLIC SERVICE COMMISSION?

A Yes. I have sponsored testimony on a variety of cost and policy topics in Arkansas, California, Illinois, Kansas, Missouri, Nebraska, Oklahoma, and Texas. Exhibit DPR-1 identifies the proceedings in which I have provided testimony and the topics I have addressed.

Q WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A The purpose of my testimony is to review the revenue requirements of United Utilities, Inc. ("UUI") as filed October 1, 2008 in Docket U-08-90 to establish reasonable access charges as guided in part by the Alaska Intrastate Interexchange Access Charge Manual ("AIICM"). I will address a variety of adjustments to UUI's filing that correct apparent errors and make adjustments UUI failed to properly reflect. Specifically, I address UUI's apparent failure to overtly consider reasonable adjustments attributable to its recent acquisition by General Communication, Inc. ("GCI"), namely the cost savings related to departing employees and the elimination of the UUI Board of Directors. I also address modifications to UUI's reasonably projected depreciation expenses, elimination or amortization of certain expenses related to both UUI's asset verification process and its recently filed request for depreciation re-prescription in Docket U-08-095, and corrections to certain asset adjustments improperly implemented in UUI's study. Finally, I address the issue of excessive corporate operations expenses.

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LAWYERS
1227 West 9th Avenue, Suite 200
Anchorage, Alaska 99501
Tel 907.276.4331 • Fax 907.277.8235

MLT-1. I believe that the FCC's allowance is more than reasonable and should also be reflected and adopted by this Commission. Thus, in the absence of other overt adjustments by UUI, I would recommend the disallowance of $125,345 of expense from the total company operations for UUI.

Q DOES YOUR RECOMMENDED DISALLOWANCE DUPLICATE ANY OTHER PROPOSED DISALLOWANCES OR UUI PROFORMA ADJUSTMENTS?

A UUI has overtly adjusted its corporate operations expenses downward in excess of my recommended disallowance of excess corporate operations expense above. Thus, for the present year filing I make no extra downward adjustment to UUI's expenses. However, for the future, I do recommend that the Commission adopt the principle that it will limit companies to corporate operations expenses to no more than the levels allowed by the FCC.

Q DOES THIS CONCLUDE YOUR TESTIMONY?

A Yes. However, I reserve the right to supplement my testimony if substantive new information comes to light.

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ASHBURN & MASON P.C.
LAWYERS
1227 WEST 9TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
TEL 907.276.4331 • FAX 907.277.8235

EXHIBIT B

PUBLIC VERSION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of **AT&T CORP.** **One AT&T Way** **Bedminster, NJ 07921** **(202) 457-3090** ***Complainant,*** ***v.*** **IOWA NETWORK SERVICES, INC.** **d/b/a Aureon Network Services** **7760 Office Plaza Drive South** **West Des Moines, IA 50266** **(515) 830-0110** ***Defendant.***	**Proceeding Number 17-56** **File No. EB-17-MD-001**

DECLARATION OF DANIEL P. RHINEHART

I, Daniel P. Rhinehart, of full age, hereby declare and certify as follows:

1. I am employed by AT&T Services, Inc., a services affiliate of Complainant AT&T Corp. ("AT&T"). My job title is Director - Regulatory. My current responsibilities include participating in regulatory dockets and litigation matters on behalf of various AT&T entities in the areas of cost analysis and universal services matters. I also direct the development of AT&T's pole attachment and conduit occupancy rates pursuant to standard FCC formulas, and I support the analysis of third-party pole attachment rates. I have been employed by AT&T and its predecessors since 1979 and have held a number of different jobs with increasing responsibilities in the finance and regulatory areas. Over the years, I have testified in a number of different federal and state rate cases regarding the reasonableness of rates filed by AT&T and by other carriers. My curriculum vitae is included as Exhibit 82 to the Formal Complaint.

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and correct. Executed on June 1, 2017.

Daniel P. Rhinehart

EXHIBIT C

AT&T
10/22/99

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PUC DOCKET NO. 21392

COMPLAINT BY AT&T	§	
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SOUTHWEST, INC. REGARDING	§	
TARIFF CONTROL NUMBER 21302	§	**OF**
SWITCHED ACCESS OPTIONAL	§	
PAYMENT PLAN (OPP)	§	**OF TEXAS**

DIRECT TESTIMONY OF DANIEL P. RHINEHART
ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.

List of files:
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Original + 22 copies

SOAH DOCKET NO. 473-99-1963
PUC DOCKET NO. 21392

TESTIMONY OF DANIEL P. RHINEHART
ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Daniel P. Rhinehart. My business address is 919 Congress Ave., Suite 400, Austin, Texas, 78701.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?

A. I am employed by AT&T as District Manager - State Government Affairs.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I graduated from the University of Nevada at Reno in 1977 with a Bachelor of Science Degree with High Distinction in Education, majoring in mathematics. In 1987, I received a Masters of Business Administration degree, with Honors, from Saint Mary's College in Moraga, California. In addition, I have attended numerous training courses covering the topics of separations, telephone accounting, and long run incremental costs. I have completed the Brookings Institute course on Federal Government Operations and the University of Southern California Center for Telecommunications Management, Middle Management Program in Telecommunications.

Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.

A. I joined Nevada Bell in 1979 as a Staff Specialist for the Residence Installation and Maintenance organization. My next assignment was in Nevada Bell's Separations and Settlements organization where I was responsible for reviews of independent telephone company separations and settlements studies.

In 1984, I joined AT&T's separations organization in San Francisco and was subsequently promoted in August 1985 with responsibility for mechanized separations results and analysis for AT&T Communications of California and later for exchange carrier cost analysis. In 1987, I became Regulatory Manager, and oversaw AT&T's participation in local exchange carrier regulatory proceedings. I was promoted in April 1995 to District Manager - Government Affairs, with responsibilities in the states of Texas, Kansas, Arkansas, Missouri, and Oklahoma. Since approximately June of 1996 I have been responsible for oversight of AT&T's participation in local exchange carrier regulatory proceedings, with a focus on Local Exchange Carrier cost studies. During that time I have become very familiar with many of the cost study processes employed by Southwestern Bell Telephone Company (SWBT). Prior to my relocation to Texas, I held the position of vice chairman of the $300 million California Universal Lifeline Telephone Service Trust Fund for approximately two years in addition to my regular work assignments.

Q. HAVE YOU PREVIOUSLY SPONSORED TESTIMONY IN OTHER REGULATORY PROCEEDINGS?

A. Yes. I have sponsored testimony in Arkansas, Kansas, Missouri, Oklahoma, Texas, and California. Attachment DPR-1 identifies the proceedings in which I have provided testimony and the topics I have addressed.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. By this testimony I will show that the Switched Access Optional Payment Plan (OPP) offered by SWBT is anticompetitive and discriminatory and, in spite of recent changes, should be rejected in its current form.

Q. ARE YOU FAMILIAR WITH THE AT&T COMPLAINT THAT INITIATED THIS DOCKET?

A. Yes.

Q. HAVE YOU REVIEWED SWBT'S RECENT REVISIONS TO THE OPP FILED BY SWBT ON OCTOBER 13, 1999?

A. Yes.

Q. DO THE CHANGES MADE BY SWBT SATISFY AT&T'S CONCERNS WITH THE OPP?

A. No. While SWBT made good efforts to clarify language, modify the termination liabilities associated with the OPP, and limit the maximum discounts available in

some circumstances, the OPP remains discriminatory and anticompetitive and should be rejected by the Commission. In fact, SWBT's modifications actually raise additional concerns.

Q. PLEASE EXPLAIN AT&T'S BROAD CONCERNS WITH THE OPP AS MODIFIED BY SWBT.

A. The discount rates offered by SWBT will place AT&T at competitive and financial disadvantage to SWBT subsidiaries, affiliates, business partners, and to other direct competitors of AT&T in the long distance market in Texas. SWBT's OPP is structured in a way that will effectively preclude AT&T from taking advantage of the best discounts afforded under Option 1, and the design of Option 2 will make substantively larger discounts available to SWBT's subsidiaries, affiliates and business partners than would be available to AT&T.

Under Option 1, a purchaser of switched access service must agree to continue to purchase substantially the same quantities of switched access service (80%, 90% or 100%) as it does today or face potentially substantial nonperformance liabilities. The discounts offered at the 80% commitment level are minimal and to qualify for the largest discount, the purchaser must commit to maintaining and increasing its switched access usage throughout the length of a five-year agreement. Because SWBT or a corporate sibling will enter the long distance market in the near future and potentially capture significant volumes of long distance traffic, it will be nearly impossible for AT&T, and perhaps many other

firms, to make and keep the commitments required to obtain the highest level of benefits of SWBT's Switched Access OPP Option 1.

SWBT's long distance entry is not the only hurdle faced by large interexchange carriers (IXCs) when considering SWBT's OPP. IXCs are constantly vying among themselves for customers and there is significant contention for customers among the largest IXCs. Competition among IXCs is part of the business risk faced by current competitors and necessarily must be weighed in any decision regarding the level of participation in the SWBT OPP that might be selected, but there are new competitors at the local level too.

The quantity of AT&T switched access purchases will be affected directly by expanding competition for local service. As local service is captured by a competitive local exchange carrier (CLEC), access charges related to AT&T toll service over those customer lines are no longer access charges that will be paid to SWBT and thus no longer eligible for consideration in the annual assessment of whether the OPP commitment levels have been met. This is true whether the CLEC provides service over unbundled network elements (UNEs) or over its own facilities. While SWBT's own words suggest that the OPP offer is designed to limit bypass of SWBT's switched access service, the terms of the OPP also have the effect of limiting AT&T's participation in it simply because AT&T has plans to compete with SWBT for local service.

SWBT's own long distance affiliate, some of its business partners, and indeed many smaller IXCs, may gladly enter into agreements with SWBT to obtain the benefits of OPP Option 1. Business growth plans and even the promise of higher volumes of traffic being routed to them by SWBT in the future may make OPP Option 1 an easy way for smaller firms to gain an instant 10% cost advantage over AT&T without regard to any difference in the cost to SWBT to serve the smaller firm versus the cost to serve AT&T. The design of OPP Option 1 is such that any large IXC, including AT&T, will be disadvantaged in an anticompetitive fashion.

Option 2 is structured to provide a lesser initial discount to the switched access customer but is also structured to provide customers that significantly grow their access minutes of use year over year with access rate reductions that exceed those available under OPP Option 1. For each ten percent increase in switched access volumes, an Option 2 customer will receive an additional one percent discount (up to a four percent maximum) in its total access bill above the base discount guaranteed in the Option 2 agreement. Once again, this offer is discriminatory against AT&T because it would be easy for a SWBT long distance affiliate or subsidiary to gain the maximum discounts while at the same time it would be impossible for AT&T to grow its switched access volumes significantly. Indeed the FCC recently found that switched access discount plans designed around growth in volumes would not be approved by them exactly because such plans

provide discriminatory preference to the Bell Operating Companies' long distance affiliates.

Q. DO YOU BELIEVE THAT ANY DISCOUNTS FOR SWITCHED ACCESS SERVICE COULD BE REASONABLE?

A. I believe that in some instances discounts based on the absolute quantity of traffic delivered could be reasonable. In such instances, cost-causative differences could be discerned. However, smaller interexchange carriers have traditionally complained about such plans because such plans would provide the greatest discounts to carriers such as AT&T, Worldcom, and Sprint. In the OPP before us now, we see the opposite side of the coin. Smaller firms could benefit disproportionately through lower switched access rates even though they have much smaller quantities of traffic than the largest carriers and cannot justify receiving a lower price based on cost.

Q. DO YOU BELIEVE THAT THERE ARE ANY WAYS THAT THE SWBT OPP CAN BE MADE ACCEPTABLE TO AT&T?

A. I do not believe that Option 2 is reasonable under any circumstance. Providing additional discounts to carriers based on increases in switched access volumes will have the effect, intended or not, of overtly benefiting an affiliate or business partner of SWBT by making it easy for such a firm to obtain the best discounts available.

share in Connecticut continued its steep decline to 41.8%.[7]

Q. CAN YOU EXPLAIN SNET'S SUCCESS IN THE MARKETPLACE?

A. SNET probably says it best in a press release dated July 29, 1999. A SNET spokesman said:

> Connecticut customers appreciate SNET's ability to provide both local and long-distance service, and this is reflected in the significant market share we've gained in the Connecticut long-distance market. Soon we hope to offer customers in our other regions packages of integrated services that would feature long-distance – something we know they want.

Q. WHAT ARE THE IMPLICATIONS OF THIS DATA?

A. The implications are two-fold. Once SWBT or an affiliate or subsidiary gains authority to offer interLATA long distance service in Texas, it will gain presubscribed lines rapidly and it will be in a position to agree to SWBT's OPP Option 1 or 2 without facing any risk that it would be unable to qualify for the greatest possible discounts under the OPP. Second, AT&T will face massive and certain market share losses to SWBT that will preclude AT&T from meeting the requirements for obtaining and keeping the same discounts. The result is obvious. SWBT's OPP is discriminatory and anticompetitive because it will effectively grant highly favorable treatment to at least one carrier – a SWBT affiliate – while at the same time preclude AT&T the opportunity to enjoy the same benefits.

[7] Connecticut results should also be compared to AT&T's nation-wide average residential market share of 58.3% in 1998 to appreciate the significant effect that SWBT interLATA entry is likely to have on AT&T. 1998 results from the FCC's Industry Analysis Division, Common Carrier Bureau report *Trends in Telephone Service*, September 1999. The report can be downloaded [file names TREND299.ZIP, TREND299.PDF] from the FCC-State Link Internet site at http://www.fcc.gov/ccb/stats.

to permit LATA by LATA agreements, and it must be modified to explicitly recognize the effects of entry into the long distance market by SWBT or an affiliate or subsidiary as outlined above. If Option 1 is not rejected outright, but is modified by the Commission, then all existing Option 1 agreements must be modified to conform with the requirements of an order from this Commission. If Option 1 is rejected by the Commission, then all existing Option 1 agreements should be terminated.

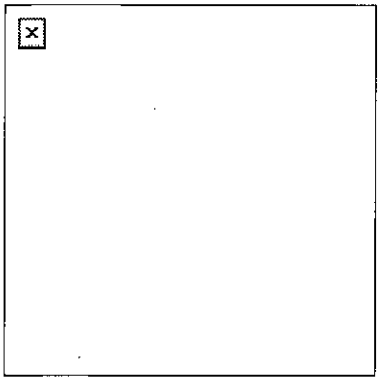
Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

EXHIBIT D

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI



In the Matter of Southwestern Bell Telephone)

Company's Proposed Tariff to Introduce a) **Case No. TT-2000-258**

Discount on the Local Plus® Monthly Rate.) Tariff No. 200000254

Issue Date: April 6, 2000

Effective Date: April 17, 2000

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Southwestern Bell Telephone)

Company's Proposed Tariff to Introduce a) **Case No. TT-2000-258**

Discount on the Local Plus® Monthly Rate.) Tariff No. 200000254

APPEARANCES

Leo J. Bub, Attorney at Law, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Kevin K. Zarling, Attorney at Law, 919 Congress Avenue, Suite 900, Austin, Texas 78701-2444, for AT&T Communications of the Southwest, Inc.

Linda K. Gardner, Attorney at Law, 5454 West 110th Street, Overland Park, Kansas 66211, for Sprint Communications Company, L.P.

Michael Dandino, Attorney at Law, P.O. Box 7800, Jefferson City, Missouri 65102-7800, for Office of the Public Counsel and the Public.

William K. Haas, Attorney at Law, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History:

On September 20, 1999, Southwestern Bell Telephone Company (SWBT) issued a revision to its tariffs that proposed to offer a discount on the Local Plus monthly rate to business customers who have more than one line. The tariff revision bore an effective date of October 20, 1999. On September 29, AT&T Communications of the Southwest, Inc. (AT&T) filed an Application to Intervene

and a Motion to Reject or in the Alternative Suspend the Proposed Tariff.

On October 1, the Commission issued a Notice Establishing Time in Which to Respond, directing that any response to AT&T's application and motion was to be filed on or before October 12. On October 12, the Staff of the Public Service Commission (Staff) filed a Memorandum recommending that the Commission suspend SWBT's tariff pending an investigation of SWBT's practices regarding resale of Local Plus service to Interexchange Carriers (IXCs). Also on October 12, SWBT filed a pleading in opposition to AT&T's application and motion.

On October 14, the Commission issued an Order Granting Motion to Suspend Tariff, Granting Application to Intervene and Setting Prehearing Conference. That order suspended SWBT's tariff for a period of 120 days beyond October 20, to February 17, 2000. That order also provided notice to all Incumbent Local Exchange Companies, all Competitive Local Exchange Companies (CLECs), and all IXCs in the State of Missouri. Any interested persons or entities wishing to intervene were directed to file an application to intervene on or before November 3.

SWBT filed an Application for Partial Rehearing on October 22. Staff filed a response in opposition to partial rehearing on November 1. The Commission issued an Order Denying Application for Partial Rehearing on November 2.

On November 3, Sprint Communications Company L.P. (Sprint) filed an application to intervene. No other party requested permission to intervene. On November 5, the Commission issued an order granting Sprint's application to intervene.

A prehearing conference was held on November 17. On November 24, following the prehearing conference, Staff, on behalf of all the parties, filed a Motion to Establish Procedural Schedule. On November 30, the Commission issued an order that established the procedural schedule requested by the parties. In response to a motion by SWBT, the Commission issued an Order Establishing Protective Order on December 9. SWBT filed direct testimony in support of its tariff on December 29. Staff and AT&T filed rebuttal testimony on January 14, 2000. SWBT, Staff and AT&T filed surrebuttal testimony on January 28.

On January 21, the Staff, on behalf of all of the parties, filed a proposed list of issues. That list of issues identified only one issue, "Should Southwestern Bell Telephone Company's Local Plus promotion be approved?" The list of issues also contained a footnote indicating that the parties were unable to agree on other potential issues requiring resolution. Also on January 21, AT&T filed a separate list of seven issues which it believed should be addressed in the hearing. On January 25, the Commission issued an Order Adopting List of Issues that directed all of the parties to respond to the issues identified by AT&T. Staff, the Office of the Public Counsel (Public Counsel) SWBT, AT&T and Sprint each filed a statement of its positions regarding those issues on or before January 31.

On January 31, SWBT filed a Motion to Strike, asking that the Commission strike portions of the rebuttal testimony of one of AT&T's witnesses. SWBT described the challenged testimony as "irrelevant and improper attempts to expand this docket to relitigate matters already decided by the Missouri Public Service Commission." On the morning of the hearing, February 3, AT&T filed a response to the Motion to Strike. At the hearing SWBT's Motion to Strike was taken up by the Commission, on the record, and denied in its entirety.

The matter proceeded to a hearing on the merits on February 3, 2000. Testimony supporting and opposing SWBT's tariff was admitted into evidence. On February 10, the Commission issued an Order Further Suspending Tariff that suspended SWBT's tariff an additional sixty days, until April 17. The parties submitted initial briefs on March 2 and reply briefs on March 20.

At the hearing, questions arose concerning the resale of Local Plus by CLECs in Missouri. On February 14, SWBT submitted late-filed Exhibit No. 13, consisting of two pages entitled CLECs Reselling Local Plus in Missouri. The exhibit was submitted in both highly confidential and non-proprietary versions. On February 17, the Commission issued a Notice Regarding Late Filed Exhibit, which notified any party wishing to make an objection to the late-filed exhibit that it must do so no later than February 28. The notice also indicated that if no objections were filed, the late-filed exhibit would be admitted into evidence. No party filed any objections to late-filed Exhibit No. 13 and it will therefore be admitted into evidence.

Findings of Fact:

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

Evidence Presented:

Thomas Hughes and Sherry Myers presented testimony on behalf of SWBT. Mr. Hughes testified that Local Plus, including the promotion that is the subject of this tariff, is available for resale by CLECs and IXCs. Nine CLECs are currently reselling the service but it is not being resold by any IXCs.

CLECs have the option of using an electronic ordering system to place an order for Local Plus. That electronic system is not currently available for use by an IXC because its use is restricted to local service providers of record for the dial tone access line. That restriction excludes IXC providers. SWBT offers an alternative, fax-based ordering system for use by IXC providers who wish to order Local Plus for resale. SWBT requires that any IXC provider who wishes to resell Local Plus complete an IXC Local Plus Resale Account Profile form and enter into a resale agreement for Local Plus. Hughes testified that SWBT is willing to modify the ordering system in consultation with the IXCs if an increased demand for the service is demonstrated.

Hughes also testified that SWBT is willing to negotiate an interconnection agreement that would permit a facility-based CLEC to offer a service like Local Plus on an Unbundled Network Element (UNE) basis. However, SWBT has not determined the price it would charge such a CLEC because it has never received a request for that service.

Sherry A. Myers also presented testimony on behalf of SWBT. Ms. Myers testified that Local Plus is an optional 1-way outbound calling service available to

single-party, flat-rate residence and business customers. For a flat monthly rate additive, Local Plus subscribers can place unlimited local calls to all customers within the LATA. The promotional tariff for which SWBT seeks the Commission's approval would allow business customers who purchase Local Plus on two to ten lines to pay the tariffed rate for Local Plus for the first line and receive a discounted monthly rate on the additional lines. SWBT is willing to make the promotion available for resale at the wholesale discount. The promotion is only available for new or additional requests for Local Plus. The promotion is not available for customers who already have Local Plus.

Thomas A. Solt offered testimony on behalf of the Staff. Mr. Solt testified that the Commission should ensure that Local Plus is available for resale as a UNE by facilities based CLECs. Mr. Solt offered the opinion that the fax-based ordering system that SWBT was offering for use by IXCs was reasonable and sufficient. Mr. Solt testified that SWBT's failure to provide a detailed listing of the identifying telephone numbers of the lines on which an IXC is reselling Local Plus would make it difficult or impossible for an IXC reseller to determine if Local Plus was being applied to the proper lines. Finally, Mr. Solt testified that Local Plus and services similar to Local Plus are beneficial to consumers.

Daniel P. Rhinehart offered testimony on behalf of AT&T. Mr. Rhinehart testified that AT&T feared that SWBT would refuse to make its promotion of Local Plus available at the appropriate wholesale discount. Rhinehart also testified that SWBT should not be allowed to assess multiple first line fees on AT&T when AT&T purchases the Local Plus promotion for its separate multi-line customers. In addition to those concerns about the promotion, Rhinehart also testified that SWBT has failed to effectively make Local Plus available for resale to IXCs, such as AT&T.

Rhinehart asserted that SWBT has failed to provide IXCs the opportunity to order Local Plus through a direct mechanized process that would allow an IXC prompt access to the preorder information that is available to SWBT. Rhinehart indicated that the fax-based ordering system offered by SWBT is a poor substitute for the ordering system actually used by SWBT and puts AT&T at a competitive disadvantage. Rhinehart also objected to SWBT's requirement that AT&T, acting as an IXC, sign a separate service agreement before it would be allowed to resell Local Plus. AT&T asserts that it already has an interconnection

agreement with SWBT and that interconnection agreement should be sufficient to govern AT&T's resale of Local Plus as an IXC.

Sprint and Public Counsel participated in the hearing but did not call any witnesses or present any evidence.

Discussion

Local Plus is an optional one-way outbound calling plan offered by SWBT that allows subscribers to make unlimited calls within a Local Access and Transport Area (LATA) for a flat-rated monthly additive of either $30 for residence customers or $60 for business customers. The Commission first considered SWBT's offering of Local Plus in case number TT-98-351. In a Report and Order issued in that case on September 17, 1998, the Commission found that "imputation of access charges would not be necessary if this type of service is available for

resale at a wholesale discount to CLECs and IXCs." The Commission rejected SWBT's initial tariff offering Local Plus. However, SWBT resubmitted a Local Plus tariff incorporating the revisions suggested by the Commission. After considering the revised tariff in case number TT-99-191, the Commission allowed SWBT's Local Plus tariff to go into effect by operation of law on November 29, 1998.

The tariff that is the subject of this case concerns SWBT's promotional offer regarding its Local Plus service. The tariff proposes that each multi-line business customer pay the full $60 monthly rate for the first line equipped with Local Plus and a discounted monthly rate of $35 per line for the second through tenth line equipped with Local Plus. If a business customer ordered Local Plus in quantities of 11 or more, the customer would pay $60 for the first line equipped with Local Plus and a discounted rate of $25 for the second and additional lines equipped with Local Plus. SWBT's tariff proposed that the offer would be available from October 20, 1999 through December 31, 1999, with the discounted rates remaining in effect until December 31, 2000. The promotional period expired while this tariff was suspended.

Only two of the arguments put forward by the parties who would have the Commission reject SWBT's tariff relate directly to the proposed promotion. The first is that SWBT should be required to offer the promotion for resale at the appropriate wholesale discount when the discounted rate extends beyond ninety days. SWBT repeatedly indicated in its testimony that it would offer the promotion for resale at the discounted rate. Therefore, there is no dispute on this issue that would require resolution by the Commission.

The second issue regarding the promotion was raised by AT&T and concerns whether SWBT should be permitted to assess multiple first line fees on AT&T when AT&T purchases the Local Plus promotion for its separate multi-line customers. Essentially, AT&T argues that it should be treated as an end-user and allowed to purchase multiple lines at the discounted rate created by the promotion. AT&T's position is not supported by the evidence and indeed, AT&T's witness, Daniel P. Rhinehart, indicated at the hearing that AT&T would "accede to Southwestern Bell's billing limitations on this" (TR 247). AT&T's proposal would permit aggregation of Local Plus service. The Commission has already addressed the aggregation question in its Report and Order in Case Number TT-98-351 and found that SWBT's restriction on aggregation of Local Plus was a reasonable restriction on resale. The Commission will not reverse that finding.

The other issues raised in opposition to SWBT's promotional tariff relate to consideration of the underlying Local Plus service. Those issues concern whether or not SWBT has effectively made Local Plus available for resale by IXCs and CLECs who would like to provide those services as an unbundled network element (UNE). When the Commission initially addressed the Local Plus service in its Report and Order in Case Number TT-98-351, it found that Local Plus service would be permitted without imputation of terminating access charges only if the service were "made available for resale at a wholesale discount to CLECs and IXCs."

With regard to CLECs, the evidence demonstrated that several CLECs are actively reselling Local Plus and that the number of lines being resold is increasing from month to month. Furthermore, the availability of the proposed promotion at the wholesale discount rate may encourage additional reselling of Local Plus by CLECs. Clearly, for most CLECs Local Plus is available for resale.

However, there was some testimony presented indicating that a CLEC wishing to provision Local Plus through UNEs might encounter difficulties. SWBT indicated that it was willing to negotiate amendments to its interconnection agreement that would allow a facilities-based CLEC to offer a Local Plus service using SWBT's UNEs when the CLEC buys a switchport from SWBT. SWBT was unable to describe exactly what arrangements would be made to permit the offering of such services because no CLEC has sought to provision Local Plus in such a manner. Theoretical difficulties that might be encountered by a hypothetical competitor at some time in the future are not a reasonable basis for rejecting SWBT's promotional tariff.

AT&T, Sprint, Staff and Public Counsel are concerned that IXCs do not have adequate access to SWBT's mechanized preorder, ordering and provisioning systems. Concerns were also expressed that the billing statements offered by SWBT to IXCs seeking to resell Local Plus are inadequate. AT&T also objects to SWBT's requirement that it sign a separate service agreement before reselling Local Plus as an IXC.

The Commission will not back away from its previously stated requirement that SWBT make Local Plus available for resale to CLECs and IXCs. Availability for resale requires that SWBT allow IXCs the opportunity to resell Local Plus in a manner that is comparable to the manner in which Local Plus is resold by CLECs and in a manner that is comparable to the manner in which SWBT itself sells that service.

However, this case exists only to consider SWBT's promotional tariff. As a result, only those issues directly relating to the promotional tariff need to be resolved by the Commission. The evidence indicates that this tariff is just and reasonable and is in accord with the law and prior decisions of the Commission. The Commission is willing to approve SWBT's promotional tariff. However, because the effective dates set in the tariff for the promotion have already passed, SWBT will

be permitted to submit substitute sheets establishing appropriate dates for the promotion.

Because of the limited scope of this case, this is not the best forum for consideration of the technical aspects of the availability of resale of Local Plus by IXCs. Nevertheless, the Commission is concerned about these issues. Therefore, the Commission will open a case on its own motion to direct Staff to investigate the effective availability for resale of Local Plus by IXCs and CLECs.

Conclusions of Law:

The Missouri Public Service Commission has reached the following conclusions of law:

1. Section 392.220, RSMo Supp. 1999, requires every telecommunications company to file tariffs with the Commission showing its rates, rentals and charges for service.

2. Section 392.200, RSMo Supp. 1999, provides that "all charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than

allowed by law or by order or decision of the commission.

Based upon the Commission's review of the applicable law, SWBT's tariff, and its findings of fact, the Commission concludes that SWBT's proposed promotion should be approved.

IT IS THEREFORE ORDERED:

1. That the tariff sheets issued by Southwestern Bell Telephone Company on September 20, 1999, assigned tariff number 200000254, and previously suspended by the Commission until April 17, 2000, are rejected because the dates established for the promotion have passed.

2. That Southwestern Bell Telephone Company shall be permitted to submit substitute tariff sheets establishing appropriate effective dates for its promotion.

3. That late-filed exhibit number 13 is admitted into evidence.

4. That any evidence the admission of which was not expressly ruled upon is admitted into evidence.

5. That any objection to the admission of any evidence that was not expressly ruled upon is overruled.

6. That any motions not expressly ruled upon are denied.

7. That this Report and Order shall become effective on April 17, 2000.

BY THE COMMISSION

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Schemenauer,

and Drainer, CC., concur

Crumpton, C., not participating

Dated at Jefferson City, Missouri,

on the 6th day of April, 2000.

EXHIBIT E

AT&T GEORGIA

DIRECT TESTIMONY OF DANIEL P. RHINEHART

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

DOCKET NO. 32235

REGARDING THE UAF REVENUE REQUIREMENT OF

PUBLIC SERVICE TELEPHONE COMPANY

AUGUST 17, 2011

I.
INTRODUCTION, QUALIFICATIONS, AND SUMMARY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Daniel P. Rhinehart. My business address is 9600 Great Hills Trail, Room 204, Austin, Texas 78759.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?

A. I am employed by AT&T Services, Inc. My job title is Lead Financial Analyst. This direct testimony is submitted on behalf of AT&T Georgia (AT&T).

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.

A. I hold a Bachelor of Science in Education from the University of Nevada, Reno and a Masters of Business Administration from Saint Mary's College of California. I have attended numerous training courses covering the topics of separations, telephone accounting, and long run incremental costs. I have completed the Brookings Institution course on Federal Government Operations and the Middle Management Program in Telecommunications at the University of Southern California Center for Telecommunications Management.

Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.

A. I began my career with Nevada Bell in 1979. Soon thereafter, I joined Nevada Bell's Separations and Settlements organization where I was responsible for reviews of independent telephone company separations and settlements studies[1] and gained significant experience in analyzing telephone cost studies. Upon the divestiture of the Bell System in 1984, I joined AT&T's separations organization and was responsible for mechanized separations results and analysis for AT&T Communications of California. Later I joined the Exchange Carrier Cost Analysis group where I evaluated numerous regulatory and cost filings of local telephone companies operating in California. I also held the position of vice chairman of the California Universal Lifeline Telephone Service Trust Fund for approximately two years. I relocated to Texas in 1995 initially with responsibilities in the states of Texas, Kansas, Arkansas, Missouri, and Oklahoma. Since then I have participated in numerous local exchange carrier regulatory proceedings, with a focus on local exchange carrier cost studies. In March 2006, I joined the post-SBC-AT&T merger finance organization where I have had responsibility for developing cost studies as well as analyzing studies produced by others.

Q. HAVE YOU PREVIOUSLY TESTIFIED OR FILED TESTIMONY BEFORE A STATE BOARD OR REGULATORY COMMISSION?

A. Yes. I have sponsored testimony on a variety of cost and policy topics in Alaska, Arkansas, California, Georgia, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and Texas. I also provided testimony previously in this proceeding on

[1] "Separations" is a process by which telephone company assets, liabilities, and expenses are apportioned (separated) among regulatory jurisdictions (*e.g.*, "state" and "federal").

the appropriate cost of capital to be used by the Commission in evaluating UAF funding requests.

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to provide an assessment of Public Service Telephone Company's (Public Service) request for Universal Access Fund (UAF) support and recommend adjustments to that request.

Q. IN THE AGGREGATE, WHAT ADJUSTMENTS DO YOU RECOMMEND TO PUBLIC SERVICE'S REQUEST?

A. I recommend that the Commission disallow costs amounting to $4,200,290 from Public Service's request. Accordingly, I recommend that Public Service receive $0 of UAF support instead of the $2,422,757 it requested.

Q. PLEASE BRIEFLY SUMMARIZE YOUR RECOMMENDED ADJUSTMENTS TO PUBLIC SERVICE'S REQUEST.

A. First, I adjusted Public Service's request in accordance with the Commission's July 5, 2011 Order setting the cost of equity at 10.625%. Next, I made a $131,383 adjustment to correct Public Service's accounting for its Allowance for Funds Used During Construction (AFUDC). I then propose a series of disallowances totaling $942,342 for corporate operations expenses. These proposed disallowances are supported by specific examples of excessive costs incurred by Public Service and by regression analyses that compare Public Service's operations to certain peer groups of companies.

Next, I recommend disallowances for three other broad categories of operating expenses ($1,890,468 for plant specific, $890,051 for plant non-specific and $258,777 for customer operations expenses). These proposed disallowances are

supported by specific examples of excessive costs incurred by Public Service and by regression analyses that compare Public Service's operations to certain peer groups of companies.

Table 1 below summarizes these adjustments and their effect on Public Service's UAF funding request:

Table 1

Initial Funding Request	$2,422,757
Return on Equity Adjustment	(87,269)
AFUDC Adjustment	(131,383)
Corporate Operations Disallowance	(942,342)
Plant Specific Expense Disallowance	(1,890,468)
Plant Non-Specific Expense Disallowance	(890,051)
Customer Operations Expense Disallowance	(258,777)
Net Adjusted UAF Revenue Requirement	$ (1,777,533)

The development of these values is supported by Exhibit DPR-1, Public Service - Tab 1 UAF Earnings Report (ATT View).xlsx. I address each of these categories of expenses and the associated recommended disallowance in more detail below.

II.
ADJUSTMENT TO REFLECT A 10.625% RETURN ON EQUITY ($87, 269)

Q. WHAT IS THE APPROPRIATE RETURN ON EQUITY FOR THE PURPOSES OF PUBLIC SERVICE'S UAF REQUEST?

A. The 10.625% return on equity the Commission set in its July 5, 2011 Order.

Q. IS THIS THE RETURN ON EQUITY REFLECTED IN PUBLIC SERVICE'S REQUEST?

A. No. Public Service's request reflects a return on equity of 11.20%.

Q. HOW DID YOU ADJUST PUBLIC SERVICE'S UAF REQUEST TO PROPERLY REFLECT THE 10.625% RETURN ON EQUITY THE COMMISSION SET?

A. I started with the non-trade secret spreadsheet "Public Service - Tab 1 - UAF Earnings Report June 2010 fili.xlsx" (Tab 1 spreadsheet) filed by Public Service with this Commission on February 11, 2011 which contemplated an 11.20% return on equity. I then input the lower allowed return on equity of 10.625%.[2]

Q. WHAT IS THE IMPACT ON PUBLIC SERVICE'S UAF REQUEST DUE TO THE REDUCED RETURN ON EQUITY?

A. Public Service's UAF requirement decreased by $87,269.

III.
COST OF DEBT

Q. HAS THE COMMISSION SET SPECIFIC REQUIREMENTS FOR DETERMINATION OF THE COST OF DEBT IN THE CURRENT UAF PROCEEDING?

A. No, but it has done so in previous UAF proceedings.

Q. HOW HAS THE COMMISSION DETERMINED THE COST OF DEBT IN PREVIOUS UAF PROCEEDINGS?

A. In its Tenth and Twelfth Amendatory Orders in Docket No. 17142, the Commission required the use of company-specific cost of debt. The cost of debt was blended on a weighted basis with the Commission-determined cost of equity and the allowed cost of customer deposits (7.00%) to determine the company-specific weighted average cost of capital (WACC), subject to a maximum allowed WACC of 9.00%. The company-specific cost for debt was defined as the prior fiscal year interest payments, net of lenders' patronage dividends, if any, on both the current portion and the non-current portion of long-term debt divided by the

[2] The revised Tab 1 spreadsheet reflecting AT&T's proposed disallowances will hereafter be referred to as the "AT&T Tab 1 spreadsheet."

average of the beginning of period and end of period sum of the current and non-current portions of long-term debt.

Q. SHOULD THE COMMISSION CONTINUE TO USE ITS PAST REQUIREMENTS FOR DETERMINING THE COST OF DEBT?

A. Yes. With one clarification, the Commission should apply the requirements regarding cost of debt from the Commission's Tenth and Twelfth Amendatory Orders in Docket No. 17142 in the current proceedings as part of both the Track 1 and Track 2 processes, incorporating the recently ordered cost of equity of 10.625%.

Q. WHAT IS THE ONE CLARIFICATION YOU RECOMMEND?

A. If a company includes other interest deductions or interest associated with capital leases, then the book value of the underlying loans or leases should also be included in the denominator of the computation of the average cost of debt.

Q. WHAT IS PUBLIC SERVICE'S PROPOSED COST OF DEBT?

A. Public Service's proposed cost of debt is approximately 5.35%.

Q. DID PUBLIC SERVICE ADHERE TO THE COMMISSION'S PAST REQUIREMENTS WHEN IT DEVELOPED ITS PROPOSED COST OF DEBT?

A. Yes. Thus, I am not recommending any disallowances related to Public Service's calculation of its cost of debt.

IV.
ADJUSTMENT TO ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION ($131,383)

Q. DID PUBLIC SERVICE INCLUDE AN ALLOWANCE FOR FUNDS USED DURING CONSTRUCTION (AFUDC) OFFSET IN ITS UAF REVENUE REQUIREMENT DEVELOPMENT?

A. No. Public Service reported $101,900 in AFUDC in its form M. However, it did not reflect AFUDC in the revenue UAF requirement development. In order to

midpoint of the FCC ranges, Public Service's annual UAF revenue requirement would decline by approximately $1,400,000. Using the upper end to the FCC ranges, Public Service's UAF revenue requirement would decline by about $1,000,000. Given that this recommendation is a long-term recommendation, it was not included in Table 1 and thus represents an addition to the disallowances contained therein.

VII.
THE IMPACTS OF UAF FUNDING CAPS

Q. PLEASE SUMMARIZE THE LAST THREE UAF FUNDING REQUESTS AND DISBURSEMENTS TO PUBLIC SERVICE ?

A. Over the three cycles prior to the present one, Public Service initially requested $2,242,263 in 2008, $1,062,635 in 2009, and $1,120,336 in 2010. The approved payouts were $1,250,000 in 2008, $1,000,000 in 2009, and $1,000,000 in 2010.

Q. GIVEN THAT UAF FUNDING WAS LESS THAN REQUESTED, WERE THERE NEGATIVE IMPACTS ON PUBLIC SERVICE'S CASH POSITION?

A. Public Service ended 2008 with * * * [redacted] * * * in cash and equivalents. At the end of 2009 that value had changed to * * * [redacted]. * * * And by the end of 2010, Public Service had * * * [redacted] * * * in cash and equivalents. This is explained in more detail in the pre-filed Direct Testimony of AT&T Georgia witness Pete Martin.

VII.
SUMMARY

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. Public Service's request for UAF funding for the fiscal year ended June 30, 2010 in the amount of $2,422,757 is significantly overstated because of excessive

spending, inappropriate allocations of cost to non-regulated activities, inclusion of costs that would ordinarily be disallowed in a general rate case, and opaque practices with respect to transactions with affiliates. I recommend that the Commission disallow the entire amount of Public Service's UAF request and that they receive no UAF distribution this year.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of September 2018, copies of the foregoing document were sent to the following:

Joseph Price
Pamela Arluk
Joel Rabinovitz
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via E-mail and Hand Delivery

Keith C. Buell
Director, Government Affairs
Sprint Communications Company L.P.
900 Seventh Street N.W
Suite 700
Washington, DC 20001
Keith.Buell@sprint.com
Via Email

James F. Bendernagel, Jr.
Michael J. Hunseder
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005
jbendernagel@sidley.com
mhunseder@sidley.com
Via Email

Curtis L. Groves
Associate General Counsel
Federal Regulatory and Legal Affairs
Verizon
1300 I Street, N.W., Suite 500 East
Washington, DC 20005
curtis.groves@verizon.com
Via Email

/s/ Monica Gibson-Moore
Monica Gibson-Moore